

## **RESOLUTION NUMBER 83**

### **RESOLUTION OF THE BOARD OF ALDERMEN OF THE CITY OF ST. LOUIS, MISSOURI ORDERING AND SETTING 2007 CABLE TELEVISION RATES FOR BASIC SERVICE, EQUIPMENT and INSTALLATIONS PURSUANT TO FCC FORMS 1240 and 1205 DATED OCTOBER 13, 2006**

**Community Unit Identification # MO-0545**

#### **WHEREAS**

1. Section 623 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 543, as amended by the Cable Consumer Protection and Competition Act of 1992 ("Cable Act"), allows local franchise authorities to regulate certain cable television rates in accordance with rules and procedures established by the Federal Communications Commission (FCC); and
2. The Board of Aldermen of the City of St. Louis, Missouri ("City"), is the Franchise Authority under the City Charter; is empowered by Ordinance to consider and decide cable-related issues; adopted on June 11, 1993, Board Resolution #47 authorizing its Petition for Certification and Local Rules for Rate Regulation; and is duly certified by the FCC to regulate certain rates including those for the Basic Service Tier (BST), monthly equipment rentals, the hourly service charge (HSC), and installation fees based on the HSC, included in the Form 1205 ("equipment rates"); and
3. The Communications Division holds duties delegated by the Board of Aldermen as its Franchise Agency with respect to cable matters under Cable Regulatory Ordinance 65431, Section Thirty-Two, and the Agency is required under local rules to submit a report and recommendation on rate proposals to the Board; and
4. Charter Communications Entertainment I, LLC, doing business as Charter Communications ("Charter") and franchised to operate a cable system in the City of St. Louis in accordance with terms of a transfer of ownership from AT&T Broadband on June 30, 2001 and its franchise renewal agreement with the City of St. Louis effective May 23, 2002, has submitted to the City its *Original FCC Form 1240*, "*Updating Maximum Permitted Rates for Regulated Cable Services*," and its associated *FCC Form 1205*, "*Determining Regulated Equipment and Installation Costs*" ("Equipment Form") both dated October 13, 2006 (the "Rate Filing");
5. The Rate Filing from Charter proposes a maximum permitted rates ("MPR") of \$11.68 Charter may charge City subscribers for "Basic" cable service, and calculates increases in the MPRs for hourly service charge (HSC), equipment rental, and activities including various types of installations, re-connections and changes in service); and
6. FCC rules (47 C.F.R. §76.937(a)) place the burden on the cable operator to prove that its rates for basic service and equipment are reasonable under applicable federal law and regulations; and
12. FCC rules require that the cable operator follow the FCC's rules and instructions with regard to preparation of Form 1240 and Form 1205, presenting adequate support and documentation to justify the operator's proposed Maximum Permitted Rates; and

13. To the extent Charter fails to carry its burden of proof, the City may order Charter to reduce its rates and provide refunds based on the information submitted by Charter and /or the best available information from other sources, and/or FCC rules, including a previous FCC rate decision known as the “Bresnan Ruling” which has particular applicability to this case; and

14. FCC rules allow the Local Franchise Authority to (a) seek additional information and supporting documentation from the cable operator; (b) evaluate the correctness and reasonableness of those submissions; (c) use the most reliable data available to determine an MPR; and (d) in the context of the best information available, reasonably set maximum permitted rates different from those calculated by the Operator; and

15. The Franchise Agency, having identified certain problems, omissions, and discrepancies in the Charter’s *Original Form 1240* and supporting documentation as filed by Charter, sought legal and technical assistance in reviewing and analyzing the Rate Filing; and

16. The City’s consultants, Miller & Van Eaton, PLLC (“MVE”) and their financial consultant, Front Range Consulting, Inc. (“FRC”), prepared a *City-Corrected Form 1240* which determined that Charter’s proposed MPR for the Basic Service tier did not comply with FCC rules, did not use correct data, was calculated incorrectly, and therefore should be \$11.13, not \$11.68; and

17. The City’s Local Rules provide Charter ample opportunity to review and comment on the City consultant’s re-calculations and accompanying *Rate Report* which discussed the applicable rules, corrections and analysis justifying the lower rate; and

18. Charter commented on the *Rate Report* and *City Corrected Form 1240*, submitted its own May 23, 2007 *Revised Form 1240* indicating Charter’s that the MPR should be \$11.33, not \$11.68, and requested that any further recalculation by the City should take into account the actual inflation factors published to date by the FCC for 2005-2007, and

19. The City has complied with that request in its recalculation; by correctly using the accurate past and current inflation data pursuant to FCC rules, as shown in the 2<sup>nd</sup> *City Corrected Form 1240* and explained in the consultant’s accompanying *Addendum to Rate Report* and the *2007 Staff Report*; and,

20. In accordance with FCC rules, Charter is allowed to add a previously calculated monthly System Upgrade Surcharge to the Basic Service Tier rate, not to exceed \$0.75 for the 120 month period commencing October 2003. and

21. Charter’s *Operator Selected Rates* for Equipment and Installations as submitted are based on national averaged cost data and are equal to or less than the Maximum Permitted Rates as calculated by Charter on *Form 1205*; and

22. The Agency has supported its *2007 Staff Report* recommendations to this Board with the reports and exhibits prepared by the Front Range Consulting as received and reviewed by the Board’s Public Utilities Committee.

**NOW THEREFORE BE IT RESOLVED THAT, with regard to regulated rates in the City of St. Louis, for the reasons outlined herein, and as also discussed in the *2007 Staff Report* and the *FRC Rate Report and Addendum*, incorporated herein by reference, the Board of Aldermen finds and resolves as follows :**

#### **MAXIMUM PERMITTED RATES**

23. Charter has not met its burden of proof in supporting and justifying either its initial proposed Maximum Permitted Rates of \$11.68 for the Basic Service Tier or its revised proposed rate of \$11.33 for the period February 1, 2007 through January 31, 2008. Charter's proposed maximum charge of \$12.43 and Operator-selected current charge of \$12.42 per month (including the \$0.75 System Upgrade Surcharge) is unreasonable. Adjustments to the Form 1240 Filings were necessary, based on the City's assessment of accurate ~~and available~~ information.

24. The descriptions, methodologies and calculations in ~~FRC's 1240 Rate Report and Addendum~~ are the preferable available basis for setting the BST rate; in accordance with ~~FCC rules~~, and FRC's recalculations, ~~justifications and recommendations~~ for of Charter's maximum permitted rates are reasonable and appropriate.

25. For the twelve month period beginning February 1, 2007, **the BASIC SERVICE TIER MAXIMUM PERMITTED RATE shall be \$11.13.** Combined with the System Upgrade Surcharge of \$0.75 per month, the total combined Basic Rate charged to subscribers may not exceed \$11.88, inclusive of the ~~R~~regulatory ~~F~~fee Charter pays to the FCC (which Charter ~~lists~~ separately on subscriber bills) but exclusive of applicable franchise fees and sales taxes.

26. Charter shall use the \$ 11.13 MPR ~~set~~ in this Order as its starting point in carrying out any future required ~~BST~~ rate calculations.

27. The rates set herein are subject to further reduction and refund ~~(to the extent permitted under applicable law and regulations as the same may be amended from time to time)~~.

28. To the extent that any further change in the BST rate may ~~be~~ permitted pursuant to FCC regulations, Charter shall provide separate notice and explanation of such change pursuant to applicable law.

### IMPLEMENTATION OF RATES

~~2932.~~ Charter shall not charge any rate higher than the rates set herein, nor increase that rate, nor impose on subscribers any other charge for basic service not specified herein, including but not limited to bulk and commercial rates (to the extent such limitation is permitted by applicable law), unless such charge is first filed with and approved by the City, in accordance with applicable law and regulations, including but not limited to the notice requirements imposed by 47 C.F.R.76.1603, or as otherwise expressly permitted under applicable law and regulations.

~~303.~~ Charter may charge rates less than the MPR indicated above, as long as such rates are applied in a uniform and nondiscriminatory way, pursuant to applicable federal, state, and local laws and regulations.

~~3126.~~ Charter shall implement the \$11.88 Basic Service Tier Rate on subscriber bills no later than 40 days after the date of this Resolution, and shall continue to list or explain the BST charge as previously ~~obligated~~ required.

~~3227.~~ Charter shall issue to each subscriber a ~~refund~~ —in an amount equal to the \$0.54 monthly overcharge for the period between February 1, 2007 and actual implementation of the \$11.13 rate on that subscriber's bill. This amount shall be placed as a one-time credit on each subscriber's account no later than 40 calendar days after the date of this Resolution.

3328. Charter shall file with the Franchise Agency a report submitted no later than 72 calendar days after the date of this order. The report shall be attested to and signed by an officer of the company. The Agency is hereby authorized to require additional information as necessary to determine compliance with this Order.

36. Within 72 days from the date of this Order, Charter shall file with the Agency a certification, signed by an authorized representative of Charter, including: (a) whether and how Charter has complied fully with the provisions of this order; (b) measures taken to implement the specified rate; (c) an accounting of ordered refunds: the amount refunded to each subscriber, the date of the refunds, the number of subscribers who received the credit and the total amount of refunds issued.

#### **OTHER**

39. The findings herein are based on the representations of Charter. Should information come to the City's attention that these representations were inaccurate in any material way, the City reserves the right to take appropriate action. This Order is not to be construed as a finding that the City has accepted as correct any specific entry, explanation or argument made by Charter not specifically addressed herein.

40. The City reserves all of its rights with respect to rate regulation, including, but not limited to, any right it may have to reopen this rate proceeding based on new information or rulings by governing authority, if it appears that such new information or rulings could alter the reasonable rates prescribed by FCC regulations, and any right the City may have to "true up" overcharges or undercharges in connection with future rate filings pursuant to 47 C.F.R. § 76.922(e)(3).

41. This Order shall be effective immediately upon its approval by the Board of Aldermen. The rates set herein will govern Charter's basic service rates until Charter lawfully implements a further rate change pursuant to applicable FCC regulations. This Order constitutes the written decision required by 47 C.F.R. § 76.936(a) and shall be released to the public and to Charter, and a public notice shall be published stating that this Order has been issued and is available for review, pursuant to 47 C.F.R. § 76.936(b).

**[Board's signature block]**

Introduced this the 22<sup>nd</sup> day of June, 2007 by:

Honorable Matt Villa, 11<sup>th</sup> Ward

Honorable Terry Kennedy, 18<sup>th</sup> Ward

Adopted this the \_\_\_\_ day of \_\_\_\_\_ as attested: